**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 1:19-cr-934-WJ

ION ANTONESCU and
RAMONA GHIOCEL,

Defendants.

**MEMORANDUM OPINION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**

**THIS MATTER** is before the Court on Defendant Ramona Ghiocel's Motion to Suppress [Doc. 46], filed July 20, 2019. For the reasons stated below, Defendant's motion is **DENIED**.

**BACKGROUND**

Defendant is charged with Conspiracy to Commit Access Fraud, in violation of 18 U.S.C. § 1029(b)(2). Doc. 7. Defendant filed the subject motion requesting the Court "suppress her involuntary statements that law enforcement unlawfully and unconstitutionally coerced her into making." Doc. 46 at 1. On March 7, 2019, while at the Wichita County Juvenile Detention Facility visiting her daughter, the FBI interviewed Defendant. *Id.* at 3. The statements Defendant made during that interview are what Defendant seeks to suppress.

Defendant did not request an evidentiary hearing and the United States explained a hearing is not necessary. Doc. 56 at 2; *see* D.N.M. Crim. R. 47.10 ("Parties will state in their pleadings whether and why an evidentiary hearing is needed."). Defendant, however, provided the Court an audio recording of the interview [Doc. 48], and the United States submitted a transcript [Doc. 59].

The Court has reviewed both and determined an evidentiary hearing is not needed.

**LAW**

The United States has the burden to show, by a preponderance of the evidence, that Defendant's statements were voluntary. *United States v. Rodebaugh*, 798 F.3d 1281, 1290-91 (10th Cir. 2015) (citation omitted). When assessing voluntariness, the Court must decide "whether the confession is the product of an essentially free and unconstrained choice by its maker. If so, it may be used against him. If instead his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process." *Id.* at 1290 (citation omitted).

Whether Defendant's statements were made voluntarily is based on the "totality of circumstances." *Id.* "Relevant circumstances embrace both the characteristics of the accused and the details of the interrogation. Such factors include (1) the age, intelligence, and education of the defendant; (2) the length of detention; (3) the length and nature of the questioning; (4) whether the defendant was advised of his constitutional rights; and (5) whether the defendant was subject to physical punishment." *Id.* (citation omitted). The Supreme Court, however, has held that coercive police activity is a necessary predicate to finding a confession not voluntary. *Id.* (citation omitted).

**DISCUSSION**

At no point during the interview was Defendant's will overborne and her capacity for self-determination critically impaired. The FBI advised Defendant of her *Miranda* rights twice, at the beginning of the interview and after the break. Doc. 59-1 at 9-13; Doc. 59-2 at 2-3. She waived them in writing and stated she understood them. Doc. 59-1 at 13 ("Yes, I understand."). She then made statements for approximately an hour and a half. Her statements did not change as a result of the FBI questioning her. She maintained that she had no involvement in the alleged criminal

conspiracy. She even denied being depicted in a photo and video of her the FBI confronted her with. *Id.* at 91-96 ("The hair clip even looks like it might be the one you're wearin' right now."). The United States' analogy is correct: "If agents repeatedly tell a suspect that they want the suspect to tell them the sky is blue, and the suspect instead insists that the sky is green, the will of the suspect has not been overborne." Doc. 56 at 10.

Defendant's steadfast adherence to her version of events throughout the interview is indicative, if not determinative, that her statements were voluntary. Defendant, however, argues "[t]he totality of the circumstances support that this Court should suppress [Defendant's] statements as involuntary." Doc. 46 at 13. The Tenth Circuit identified five factors to consider when assessing the totality of circumstances. Each is discussed below, and each further supports that Defendant's statements were voluntary.

(1) Age, Intelligence, and Education of Defendant

Defendant was 36 years old at the time of the interview. *See* Doc. 56-1 at 2 ("DOB: 10/7/1982"). Although she "received only two years of education," Doc. 46 at 20, she had "ample experience with the criminal justice system." Doc. 56 at 12. At her age with her experience, Defendant had the capacity to resist law enforcement pressure and did so throughout the interview.

Defendant argues this factor supports suppression because the interview was not conducted in Romanian, her native language. Doc. 46 at 20. Defendant's argument is not persuasive. The FBI conducted the interview in English with the assistance of a Spanish translator, and Defendant concedes she is "reasonably fluent" in Spanish. *Id*. The recording and translated transcript also make clear that Defendant understood what was happening throughout the interview.

(2) Length of Detention

Defendant was not detained until after the interview. Doc. 59-2 at 11. At the beginning of

the interview, the FBI told her she "can leave at any time." Doc. 59-1 at 10. Defendant, however, argues this factor weighs in favor of finding her statements involuntary because "[she] was led to believe she was detained and would continue to be detained for a long time." Doc. 46 at 20-21. That is not entirely accurate. At the beginning of the interview, when explaining Defendant's *Miranda* rights, the FBI told her that she could leave at any time. It was not until towards the end of the interview that the FBI told Defendant she would be detained, would have a detention hearing, and that it would be a while until her trial. The FBI's explanation was neither inaccurate or coercive. Doc. 59-1 at 132-33.

(3) Length and Nature of Questioning

The interview lasted approximately an hour and a half and included one break. The recording depicts a professional and, at times, friendly interview. *See* Doc. 48. Defendant, however, argues the FBI "preyed on [her] maternal instincts to overbear her will and ability to make a rational decision to voluntary provide statements to law enforcement." Doc. 46 at 14. In support of her argument she cites a handful of cases, only one of which is binding on the Court. She also references 17 statements the FBI made during the interview that she claims preyed on her maternal instincts. *Id.* at 3-6. Defendant, however, fails to recognize her argument's fatal flaw: she agreed to participate in the interview, and her statements did not change as a result of the FBI's questioning. Her will was not overborne.

The one controlling case Defendant cites is *Lynumn v. Illinois*, 372 U.S. 528 (1963), where the Supreme Court set aside the judgment after determining the confession was "not voluntary, but coerced." *Id.* at 534. The Supreme Court explained

> petitioner's oral confession was made only after the police had told her that state financial aid for her infant children would be cut off, and her children taken from her, if she did not 'cooperate.' These threats were made while she was encircled in her apartment by three police officers and a twice convicted felon who had

> purportedly 'set her up.' There was no friend or adviser to whom she might turn. She had had no previous experience with the criminal law, and had no reason not to believe that the police had ample power to carry out their threats.

*Id.*

Defendant's description of *Lynumn* is misleading. Doc. 46 at 9. The Supreme Court did not, as Defendant claims, suppress the confession only because of the police's threats concerning her children. The Supreme Court conducted a totality of circumstances analysis to assess "whether the defendant's will was overborne at the time [s]he confessed." *Lynumn*, 372 U.S. at 534. As part of that analysis, the Supreme Court considered, among other factors, the police's threats.

Of the 17 statements Defendant references, some of them concern her children and could have contributed to Defendant's will being overborne. *See* Doc. 59-1 at 127 ("You have . . . seven children. You need to be at home for them, not in jail."); *id.* at 128 ("Think of taking care of your children and start telling me the truth."); *id.* ("The more you help me, the faster I can get you back to your children."). Defendant's will, however, was not overborne. Her statements did not waiver despite the FBI's questioning.

(4) Whether Defendant was advised of her Constitutional Rights

The FBI advised Defendant of her *Miranda* rights twice, at the beginning of the interview and after the break. Doc. 59-1 at 9-13; Doc. 59-2 at 2-3. She waived them in writing and stated she understood them. Doc. 59-1 at 13 ("Yes, I understand."). She also ended the interview by exercising them. Doc. 59-2 at 9 ("I want an attorney.").

Defendant, however, argues that before being advised of her rights, the FBI "had already preyed on her maternal instincts and suggested a quid-pro-quo benefit to her child . . . if she provided them the statements that they wanted to hear." Doc. 46 at 21. Defendant quotes the following statement by the FBI in support of her argument: "the reason I'm here today is I wanna

talk to you an [sic] try to help you and try to help your daughter." Doc. 59-1 at 7.

Context matters, and the recording makes clear that the FBI did not communicate what Defendant alleges. The FBI was explaining that they believed there are others involved in the alleged criminal conspiracy that are more culpable than Defendant and her daughter and wanted to help Defendant and her daughter by finding out who those people are. *See id.* at 126 ("I know that you're not the most important person in this scheme. I know that you're not the one making all the money. I know that you're not the one that the money is sent to. I want to know who those people are. If you help me with that, I can help you."); *id.* at 140 ("Help me find the other people . . . who put your daughter into this work.").

(5) Whether Defendant was subject to Physical Punishment

There is no evidence Defendant was subject to physical punishment, nor does Defendant make any allegations of physical punishment. Doc. 46 at 21.

**CONCLUSION**

The United States has shown, by a preponderance of the evidence, that Defendant's statements during the March 7, 2019 interview were voluntary. Her will was not overborne and her capacity for self-determination was not critically impaired.

**IT IS THEREFORE ORDERED** that Defendant Ramona Ghiocel's Motion to Suppress [Doc. 46] is **DENIED**.

**CHIEF UNITED STATES DISTRICT JUDGE**